Supreme Court, U.S.
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No. 85-1376

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985.

GLASGOW, INC.,

Petitioner,

v.

STEPHEN S. NOETZEL and
MARILYN B. NOETZEL, his wife,

Respondents.

On Petition for a Writ of Certiorari
To the Supreme Court of Pennsylvania.

REPLY BRIEF.

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Respondents in their brief in opposition do not even pretend to deny the outrageous conduct that deprived Glasgow of any opportunity to defend on the merits.

On the contrary, respondents have devoted almost all of their brief in opposition to issues that Glasgow has not raised in this Court. For example, they boldly declare that "Glasgow's assertion . . . that it did not receive actual notice is false" (p. 5). Whatever factual issue there might be about notice to Glasgow of the West Virginia suit would hardly be an issue for this Court, but the fact is that undisputed testimony presented to the Pennsylvania courts establishes that Glasgow did not receive actual notice.

The primary issue we ask this Court to review is whether the undenied procedural manipulation that occurred in West Virginia amounted to a violation of procedural due process when the West Virginia courts refused to entertain

Glasgow's claim of mistake. On that issue, respondents have offered nothing.

The second issue is whether res judicata barred Glasgow from raising the due process question in Pennsylvania. On that issue, respondents make one new point, the decision of the United States District Court for the Southern District of West Virginia in the case in which Glasgow did present the federal due process question. What respondents fail to recognize is that the district court's basic decision in that case was that it was without jurisdiction [Glasgow, Inc. v. Noetzel, 556 F. Supp. 595, 597-598 (S.D.W.Va. 1983)]. It is well established that a court's determination of an issue is not conclusive in a later action if the determination was not essential to the court's judgment or if it was an al-

ternative determination. Restatement (Second) of Judgments § 27 and comment i (1982).

Respectfully submitted,

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March 19, 1986.